IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.3304 of 2002
and
WAMP.No.2291 of 2003

C.R.Jothi Mallika .. Appellant/Petitioner

Vs.

1.Paulian
2.Palammal
3.Saroja
4.The Zonal Deputy Tahsildar-cum-
Plan officer, (Section-II),
Vilavankodu, Kanyakumari District.

5.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District. .. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 08.10.2002 made in W.P.No.37987 of 2002. Presented under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records in connection with the order of the 5th Respondent dated 15.7.2002 in Na.Ka.Aa.1 15070/2000 confirming the order of the 4th respondent in No.E2/4162/2001 and direct the said respondent to forbear from issuing any patta to the 1st respondent in connection with the lands in Re-Survey No.636/6B, 7, 8 and 9 in Arumani Village, Vilavangodu Taluk, Kaniyakumari District.

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For Appellant : Mr.R.Srinivas
For 1st Respondent : Mr.A.K.Kumarasamy
For respondents 2 & 3 : No appearance
For respondents 4 & 5 : Mr.P.Subramanian, G.A.,

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 08.10.2002 made in W.P.No.37987 of 2002, the petitioner has preferred the above appeal.

2. Heard the learned counsel appearing for the appellant as well as respondents 1, 4 and 5.

3. It is the grievance of the appellant that the Zonal Deputy Tahsildar, Kanyakumari District, the fourth respondent herein, without giving notice to him or affording opportunity, passed an order granting individual patta in the name of the first respondent herein viz.,Paulian. According to the learned counsel, when the appellant filed an appeal before the Revenue Divisional Officer, Padmanabhapuram, the fifth respondent herein, without either hearing or affording any opportunity, had passed an order, confirming the order of the Zonal Deputy Tahsildar. In other words, the only grievance of the appellant was that both before the Zonal Deputy Tahsildar, the fourth respondent and the Revenue Divisional officer, the fifth respondent, she was not given opportunity to putforth her case. A perusal of the orders of both the authorities show that based on the decree of the Civil Court and accepting the claim of the first respondent, the order came to be passed granting individual patta in favour of the first respondent.

4. Learned counsel appearing for the appellant submitted that first of all, she is not a party to the civil proceedings and in any event, if an opportunity given to her, she should have convinced the authorities that she is also entitled to a right over the property in question.

5. Considering the assertion and claim of the appellant with regard to failure on the part of the respondents 4 and 5 in affording an opportunity to put forth her case and in view of the dispute as well as the judgment and decree passed by the Civil Court, we are of the view that ends of justice would be met by directing the fifth respondent to re-hear the appeal after affording opportunity to the appellant and respondents 1 to 3. The above aspect was not considered by the learned single Judge, though there is no quarrel as to the proposition of law laid down by the Division Bench of this Court reported in 1995 M.L.J 426 (KUPPUSWAMI NAINAR VS. THE DISTRICT REVENUE OFFICE, THIRUVANNAMALAI AND OTHERS). On this ground, we remit the matter

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to the Revenue Divisional Officer, Padmanabhapuram, the fifth respondent herein. On receipt of the above order, the Revenue Divisional Officer is directed to issue notice to the appellant-petitioner viz.,C.R.Jothi Mallika as well as respondents 1 to 3 viz.,(1) Paulian, (2)Palammal and (3)Saroja and pass an order after hearing and affording adequate opportunity to all the above mentioned parties within a period of four months from the date of receipt of a copy of this order.

6. The writ appeal is disposed of on the above terms. No costs. W.A.M.P.No.2291 of 2003 is closed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Zonal Deputy Tahsildar-cum-
Plan officer, (Section-II),
Vilavankodu, Kanyakumari District.

2.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

+ 1 cc to the Government Pleader, SR No.19865

+ 1 cc to Mr. R. Srinivas, Advocate SR no. 19471

+ 1 cc to Mr. A. K. Kumarasamy, Advocate SR No. 19152

W.A.No.3304 of 2002

NG(CO)
SR/9.4.2007

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